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August 5, 2004

To: Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Attn: Art Unit 2812 - Lynne Ann Gurley  
From: George O. Saile, Reg. No. 19,572  
28 Davis Avenue  
Poughkeepsie, N. Y., 12603

Subject: | Serial No.: 10/767,292 01/29/04 |

Hai Cong et al.

A NOVEL METHOD TO CONTROL DUAL  
DAMASCENE TRENCH ETCH PROFILE AND  
TRENCH DEPTH UNIFORMITY

|\_ Art Group: 2812 Lynne Ann Gurley\_|

RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Restriction or Election Requirement in the Office Action dated 07/22/04. In that Office Action, restriction was required to one of two stated

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 9, 2004.

Stephen B. Ackerman, Reg.# 37761

Signature/Date

 8/9/04

Inventions under 35 U.S.C. 121. The Inventions stated are Group I - Claims 1-30 to a process, classified in Class 438, subclass 622 and Group II - Claims 31-32 to a semiconductor device, classified in Class 257, subclass 758+.

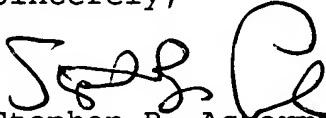
Applicant provisionally elects to be examined the Invention described by the Examiner as Group I - Claims 1-30 drawn to a process classified in Class 438, subclass 622. This election is made with traverse of the requirement under 37 C.F.R.1.143 for the reasons given in the following paragraphs.

The Examiner is respectfully requested to reconsider the Requirement for Restriction given in the Office Action. The Examiner gives the reason for the distinctness of the two inventions as (1) that the process as claimed can be used to make other and materially different products or (2) that the product as claimed can be made by another and materially different process (MPEP 806.05(f)). However, upon reading the product Claims against the process Claims one can readily see that the product Claims are directed to "a bi-layered hard mask structure" and the process Claims are directed to "a method for fabricating IC's", it is necessary to obtain claims in both the product and method claim language. The method Claims necessarily use the product and vice versa. The field of search must necessarily cover both the method class/subclass 438/622 and products class 257/758+ in addition to other related Classes

and subclasses to provide a complete and adequate search. The fields of search for the Group I and Group II inventions are clearly and necessarily co-extensive. The Examiner's suggestion that "In the instant case, the process as claimed can be used to make other and materially different products, i.e. a product in which the HM1/HM2/IMD stack is other than that claimed in the device structure (USG/SiC or SiN/(Fluorine doped oxide of SiO<sub>2</sub>; or Carbon-doped Oxide; or Organic based low-k dielectric; or porous low-k dielectric)", is very speculative and really has nothing to do with the Claims as presented in this Patent Application. Further, it is respectfully suggested that these reasons are insufficient to place the additional cost of a second Patent Application upon the Applicants. Therefore, it is respectfully requested that the Examiner withdraw this restriction requirement for these reasons.

Withdrawal of the Restriction Requirement and the Allowance of the present Patent Application is requested.

Sincerely,

  
Stephen B. Ackerman, Reg.# 37761